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**Federal Communications Commission**

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Halifax Christian Community Church, Inc.	)	File Number EB-04-TP-054
Licensee of WFBO-LP	)	NAL/Acct. No. 200532700003
Flagler Beach, Florida	)	FRN: 0006871339
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Released: December 6, 2004

By the District Director, Tampa Office, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Halifax Christian Community Church, Inc. (“Halifax”), licensee of low power FM (“LPFM”) radio station WFBO-LP, Flagler Beach, Florida, apparently liable for a forfeiture in the amount of twenty-one thousand dollars (\$21,000) for willful and repeated violation of Sections 11.35, 73.840, 73.845, and 73.1660(a)(2) of the Commission's Rules (“Rules”).<sup>1</sup> Specifically, we find Halifax apparently liable for failure to install and maintain operational EAS equipment and operating overpower with a non-certified transmitter from an unauthorized location.

**II. BACKGROUND**

2. In response to a complaint, agents of the Enforcement Bureau’s Tampa Office (“Tampa Office”) investigated station WFBO-LP in Flagler Beach, Florida. On February 20, 2004, before inspecting the main studio, the agents observed the station’s transmitter operating at 450 watts, a level significantly above the station’s authorized power of 27 watts. The transmitter consisted of a non-certified exciter attached to a 500-watt amplifier and was located approximately 1½ miles from its licensed geographic coordinates. During the inspection of the main studio, the agents observed that the station had not installed any EAS equipment. The station owner admitted that the station had never installed any EAS equipment. The station owner also acknowledged that the transmitter was not located at its licensed coordinates, had always been located in its current location, and had been operating overpower. The agents returned to the transmitter site with the station owner, who lowered the transmitter’s power level before the agents reached the power meter. During this inspection, the agents observed the transmitter operating at 320 watts.

**III. DISCUSSION**

3. Section 11.35(a) of the Rules<sup>2</sup> states that broadcast stations are responsible for ensuring

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<sup>1</sup>47 C.F.R. §§ 11.35(a), 73.840, 73.845, 73.1660(a)(2).

<sup>2</sup>47 C.F.R. § 11.35(a).

that EAS equipment is installed so that the monitoring and transmitting functions are available during the times the station is in operation. During an inspection on February 20, 2004, there was no EAS equipment installed at the station. Accordingly, the monitoring and transmitting functions of the EAS equipment were not available. The station owner admitted that the station had never installed any EAS equipment.

4. Section 73.840 of the Rules<sup>3</sup> requires the station to maintain the transmitter power output (“TPO”) as near as practicable to its authorized value, but not less than 90% of the minimum TPO, nor greater than 105% of the maximum authorized TPO. The station was authorized to operate at 27 watts. On February 20, 2004, the station’s transmitter operated at over 1000% of its authorized power. The station owner admitted to increasing the transmitter power over the authorized level to provide additional coverage for the station.

5. Section 73.845 of the Rules<sup>4</sup> requires each LPFM station to maintain and operate its station in accordance with the terms of its station authorization. Station WFBO-LP’s station authorization specified its authorized transmitter location by geographic coordinates. However, the station’s transmitter was constructed approximately 1-1/2 miles away from the authorized location. The station owner stated that he was aware of this fact and that the transmitter had always been located in the same place.

6. Section 73.1660(a)(2) of the Rules<sup>5</sup> requires every LPFM station to use an FCC Certified transmitter. The transmitter used by station WFBO-LP consisted of an exciter and amplifier. Neither of these pieces of equipment were FCC Certified.

7. Based on the evidence before us, we find Halifax willfully<sup>6</sup> and repeatedly<sup>7</sup> violated Sections 11.35, 73.840, 73.845, and 73.1660(a)(2) of the Rules by failing to install and maintain EAS equipment and operating overpower with a non-certified transmitter from an unauthorized location.

8. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”) and Section 1.80(b)(4) of the Rules,<sup>8</sup> the base forfeiture amounts are as follows: failure to install EAS equipment, \$8,000; use of unauthorized equipment, \$5,000; exceeding power limits, \$4,000; and construction or operation at an unauthorized location, \$4,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity

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<sup>3</sup> 47 C.F.R. § 73.840.

<sup>4</sup> 47 C.F.R. § 73.845.

<sup>5</sup> 47 C.F.R. § 73.1660(a)(2)

<sup>6</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act . . . .” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

<sup>7</sup> The term “repeated,” when used with reference to the commission or omission of any act, “means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

<sup>8</sup> 47 C.F.R. § 1.80(b)(4).

of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>9</sup> Considering the entire record and applying the factors listed above, this case warrants a \$21,000 forfeiture.

#### **IV. ORDERING CLAUSES**

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>10</sup> and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,<sup>11</sup> Halifax Christian Community Church, Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-one thousand dollars (\$21,000) for willful and repeated violation of Sections 11.35, 73.840, 73.845, and 73.1660(a)(2) of the Rules by failing to install and maintain required EAS equipment and operating overpower with a non-certified transmitter from an unauthorized location.

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, Halifax Christian Community Church, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, IL 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. The payment should note *NAL*/Acct. No. 200532700003, and FRN 0006871339. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>12</sup>

12. The response, if any, must be mailed to Federal Communications Commission, 2203 N. Lois Avenue Suite 1215, Tampa, Florida 33607 within thirty days of the release date of this *NAL* and **MUST INCLUDE THE *NAL*/Acct. No. referenced above.**

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. **IT IS FURTHER ORDERED** that a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to Halifax Christian Community Church, Inc., Ronald L. Kocher, President, 45 Pine Hill Lane, Palm Coast, FL 32164.

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<sup>9</sup>47 U.S.C. § 503(b)(2)(D).

<sup>10</sup>47 U.S.C. § 503(b).

<sup>11</sup>47 C.F.R. §§ 0.111, 0.311 and 1.80.

<sup>12</sup>See 47 C.F.R. § 1.1914.

FEDERAL COMMUNICATIONS COMMISSION

Ralph Barlow  
District Director, Tampa Office, South Central Region  
Enforcement Bureau